

In the Matter of)
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Emergency Broadband Benefit Program) WC Docket No. 20-445

³ Emergency Broadband Benefit Program, Report and Order, WC Docket No. 20-445, FCC 21-29 ¶ 98 (2021).

their reimbursement claims for service for households captured on the snapshot report.⁴ Further, the Commission provided, “claims submitted after that deadline will not be processed.”⁵

The Commission has explained that these claim-processing rules—unique to the EBBP—are important because the EBBP “is a limited duration program” with a fixed budget, and, accordingly, USAC will need to keep track, on a near-real-time basis, of reimbursement requests to be able to project when the budget will be exhausted and the program will end.⁶ Indeed, the Commission has carefully designed the program around this budget limitation, directing USAC to develop a methodology to forecast when the Emergency Broadband Connectivity Fund will be able to pay out reimbursement claims for only another 75 to 90 days, and stating the Commission’s intent to provide “at least 60 days’ notice before the end of the Program.”⁷

Lumen seeks a limited waiver of these claim-processing timing rules for support for May 2021, which would otherwise be based on the June 1, 2021 snapshot with a due date for reimbursement requests of June 15, 2021. Specifically, Lumen requests that the Commission provide it an additional month to seek reimbursement for subsidies provided to customers for their May 2021 broadband bills, whether those subsidies were actually applied in May or in June, based on the July 1, 2021 snapshot.

Since the program began, Lumen has received thousands of requests from customers seeking to enroll. In order to confirm those customers’ eligibility and to apply the appropriate discounts, Lumen must first confirm through the National Verifier that those customers are

⁴ *Id.*

⁵ *Id.* ¶ 99.

⁶ *See id.* ¶ 98.

⁷ *See id.* ¶ 116.

eligible; then it must apply the subsidy to the customers' accounts; and then it must upload the customers' information to the NLAD. Only once each customer's information is uploaded to the NLAD as an enrolled participant will that customer appear in a "snapshot" on which reimbursement claims can be made.

Although Lumen personnel have been working diligently to verify and enroll customers, they have faced myriad obstacles and challenges in doing so, ranging from difficulties accessing USAC's systems to challenges verifying the eligibility even of customers known to be eligible. As of the filing of this petition, despite these extensive efforts, and despite having sought troubleshooting assistance from USAC throughout the process, Lumen has succeeded in enrolling only a single customer with the program, and that single customer was only finally enrolled today, May 26. Lumen remains hopeful that with the continued, cooperative efforts of Lumen and USAC, the issues that remain will be promptly resolved. At this time, however, without a waiver, Lumen will not likely be able to process and apply discounts before June 1 for some customers who have already applied. For eligible customers that applied in advance of the end of the month, missing the opportunity to receive a subsidy merely because of technical issues that were not their fault would amount to an unjust hardship. Lumen seeks a waiver to permit these customers to receive the subsidy.

Lumen's request satisfies the Commission's well established waiver standard, pursuant to which the Commission will waive its rules where "special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest."⁸ In making its

⁸ See Emergency Broadband Benefit Program, Order, WC Docket No. 20-445, DA 21-455 ¶ 6 (WCB 2021) (citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

determination, the Commission “may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.”⁹

Special circumstances apply here because, although Lumen personnel sought assistance from USAC repeatedly and promptly, Lumen has faced substantial obstacles in validating or enrolling applicants. Although Lumen is committed to working through the many applications it has received quickly, it is unlikely Lumen will be able to complete the process of verifying customer eligibility, applying discounts, and submitting the information to NLAD before the June 1 snapshot for those who have applied for benefits.

The requested waiver will serve the public interest because it will permit Lumen to extend subsidies to customers who are eligible but who may otherwise not receive them for the month of May through no fault of their own. These customers applied for the benefit, are eligible for the benefit, and Lumen would have been able to extend the benefit to them for May but for the challenges and obstacles that Lumen has been working diligently with USAC to resolve.

Importantly, granting the requested waiver, which is limited to the first month of the program, will not materially impair USAC’s ability to project when the Fund will be exhausted and the program will end. If the waiver is granted, USAC will have current claims data for Lumen no later than July 15, and, accordingly, its forecasts after that date will reflect current data. Although USAC has not yet issued any calculations regarding the status of the Fund, the Commission announced on May 20 that more than one million households had enrolled.¹⁰ Even

⁹ *Id.* (citing *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

¹⁰ *See* Federal Communications Commission, Emergency Broadband Benefit Program Enrolls Over One Million Households, Press Release, *available at* <https://docs.fcc.gov/public/attachments/DOC-372622A1.pdf> (May 20, 2021).

if enrollment accelerates, there is little likelihood that that the Commission will be announcing a target date for the end of the program before July 15—and therefore a delay until that date for claims information for Lumen’s May subsidies will not impair the Commission’s ability to forecast accurately and to provide at least 60 days’ notice of the program’s end date, as it intends.

For these reasons, the Commission should grant the requested waiver and permit the affected consumers to receive the benefits for which they are eligible.

Respectfully submitted,

LUMEN

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